Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1-7 and 10-16 are pending in the application, with claims 1, 4, and 7 being the independent claims. Claims 12, 13, and 16 are sought to be amended. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Provisional Nonstatutory Double Patenting Rejection

The Examiner has provisionally rejected claims 1, 2, 4, 5, 7, and 10 under the judicially created doctrine of obviousness-type double patenting for allegedly being unpatentable over claims 8 and 26 of co-pending Application No. 10/880,769.

Pursuant to M.P.E.P. Section 804(I)(B), since co-pending Application No. 10/880,769 has not been allowed, the Examiner should maintain the double patenting rejection in this instant application as a 'provisional' double patenting rejection, which can be converted into a double patenting rejection when the co-pending Application No. 10/880,769 issues as a patent. Applicants will appropriately address the provisional double patenting rejection in the event it is converted to an actual double patenting rejection pursuant to M.P.E.P. Section 804(I)(B) after co-pending Application No. 10/880,769 issues as a patent.

Rejections under 35 U.S.C. § 103

Claims 1, 4, and 7

Claims 1, 4, and 7 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,658,024 to Okamura ("Okamura"), in view of U.S. Patent No. 5,774,455 to Kawase et al. ("Kawase"). For the reasons set forth below, Applicants respectfully traverse.

The combination of Okamura and Kawase does not teach or suggest each and every feature of independent claims 1, 4, and 7. For example, as will be explained below, the combination of Okamura and Kawase fails to teach or suggest at least "the first bit rate and the second bit rate being constrained such that a transmission latency does not exceed a predetermined maximum allowed transmission latency," as recited by independent claims 1, 4, and 7. The Office Action, at page 10, explicitly agrees that Okamura fails to teach or suggest this feature of claims 1, 4, and 7. However, the Office Action alleges that Kawase remedies the deficiency of Okamura. Without acquiescing to propriety of the asserted combination, Applicants respectfully disagree.

The Office Action cites to column 2, lines 35-51 of Kawase in support of the rejection of claims 1, 4, and 7. Specifically, Kawase at column 2, lines 35-51 describes a transmission rate $r_T(t)$ that is calculated based on two criteria: the rate at which information to be transmitted is generated, and the maximum acceptable delay in transmitting the generated information. Kawase, at most, determines a *single* transmission rate $r_T(t)$. This is in complete contrast to the feature of claims 1, 4, and 7, noted above, where both a first *and* second bit rate are determined such that a

transmission latency does not exceed a pre-determined maximum allowed transmission latency.

Because of the above noted deficiencies, Okamura and Kawase cannot render independent claims 1, 4, and 7 unpatentable. Accordingly, Applicants respectfully request that the rejection of claims 1, 4, and 7 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

Claims 2, 5, and 10

Claims 2, 5, and 10 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Okamura in view of Kawase, and in further view of U.S. Patent No. 6,801,570 to Yong ("Yong"). For the reasons set forth below, Applicants respectfully traverse.

Without acquiescing to the propriety of the asserted combination, Yong does not cure the deficiencies of Okamura and Kawase with respect to independent claims 1, 4, and 7 as noted above. Consequently, independent claims 1, 4, and 7 are patentable over the combination of Okamura, Kawase, and Yong. Claims 2, 5, and 10 are similarly patentable over the combination of Okamura, Kawase, and Yong for at least the same reasons as independent claims 1, 4, and 7, from which the respectively depend, and further in view of their own respective features. Accordingly, Applicants respectfully request that the rejection of claims 2, 5, and 10 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

Claims 3, 6, 11, and 12

Claims 3, 6, 11, and 12 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Okamura in view of Kawase, Yong, and in further view of U.S. Patent No. 6,009,122 to Chow ("Chow"). For the reasons set forth below, Applicants respectfully traverse.

Without acquiescing to the propriety of the asserted combination, Chow does not cure the deficiencies of Okamura, Kawase, and Yong with respect to independent claims 1, 4, and 7 as noted above. Consequently, independent claims 1, 4, and 7 are patentable over the combination of Okamura, Kawase, Yong, and Chow. Claims 3, 6, 11, and 12 are similarly patentable over the combination of Okamura, Kawase, Yong, and Chow for at least the same reasons as independent claims 1, 4, and 7, from which the respectively depend, and further in view of their own respective features. Accordingly, Applicants respectfully request that the rejection of claims 3, 6, 11, and 12 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

Claim 13

Claim 13 is rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Okamura in view of Kawase, Yong, Chow, and in further view of U.S. Patent No. 6,580,752 to Amrany et al. ("Amrany"). For the reasons set forth below, Applicants respectfully traverse.

Without acquiescing to the propriety of the asserted combination, Amrany does not cure the deficiencies of Okamura, Kawase, Yong, and Chow with respect to independent claim 7 as noted above. Consequently, independent claims 7 is patentable

over the combination of Okamura, Kawase, Yong, Chow, and Amrany. Claim 13 is similarly patentable over the combination of Okamura, Kawase, Yong, Chow, and Amrany for at least the same reasons as independent claims 7, from which it depends, and further in view of its own respective feature. Accordingly, Applicants respectfully request that the rejection of claim 13 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

Allowable Subject Matter/Objections

Claims 14-16 have been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all limitations of the base claim and any intervening claims. Based on the above Remarks, Applicants submits that claims 14-16 are patentable over the art of record without being rewritten in independent form including all limitations of the base claims and any intervening claims. Therefore, it is respectfully requested that the objection to claims 14-16 be reconsidered and withdrawn.

Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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